

1

2

3

4

5

6

7

8

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

9

10

11 STEPHEN GRANUCCI,

Case No. 1:22-cv-01428-JLT-CDB

12 Plaintiff,

ORDER CONSOLIDATING ACTIONS
PURSUANT TO RULE 42(a) AND ORDER
GRANTING DEFENDANT'S MOTION TO
DISMISS FOR LACK OF JURISDICTION
(Doc. 3)

13 v.

14 UNITED STATES POSTAL SERVICE,

15 Defendant.

16 STEPHEN GRANUCCI,

Case No. 1:22-cv-01483-CDB

17 Plaintiff,

ORDER CONSOLIDATING ACTIONS
PURSUANT TO RULE 42(a) AND ORDER
GRANTING DEFENDANT'S MOTION TO
DISMISS FOR LACK OF JURISDICTION

18 v.

19 UNITED STATES POSTAL SERVICE,

20 Defendant.

(Doc. 5)

21

22

23

Pending before the Court is Defendant United States Postal Service's ("Defendant") motions to dismiss for lack of jurisdiction. *Stephen Granucci v. United States Postal Service*, No. 1:22-cv-01428-JLT-CDB (Doc. 3) ("Granucci I"); *Stephen Granucci v. United States Postal Service*, No. 1:22-cv-01483-CDB (Doc. 5) ("Granucci II").¹ Plaintiff Stephen Granucci

24

¹ The parties have consented to the jurisdiction of the United State Magistrate Judge in

1 (“Plaintiff”) did not file an opposition or any other response to Defendant’s motion to dismiss,
2 and the time to do so has passed.²

3 **BACKGROUND**

4 On December 22, 2021, Plaintiff claims he shipped a Tiffany ring through the United
5 States Post Office. *Granucci II* Compl. (Doc. 1-1). Plaintiff asserts the ring did not arrive at the
6 destination and was not “tagged as dropped in the USPS tracking system.” *Id.* Plaintiff asserts he
7 followed Defendant’s missing parcel and lost mail procedures, but he was provided no details
8 about Defendant’s investigations and the ring was not found. *Id.* Plaintiff alleges the ring was
9 stolen by an employee of Defendant and filed a claim through Defendant’s “process” but was
10 denied. *Id.*

11 On August 25, 2022, Plaintiff filed an action against Defendant in Small Claims Court of
12 California, Kern County. *Granucci I* Compl. (Doc. 1 at p.8). On October 28, 2022, Plaintiff filed
13 a virtually identical action with the same allegations against Defendant in Small Claims Court of
14 California, Kern County. *Granucci II* Compl. (Doc. 1-1). Defendant removed these small claim
15 actions to this Court on November 3 and November 17, 2022, pursuant to 28 U.S.C.S. §
16 1442(a)(1). *Granucci I* Notice of Removal (Doc. 1); *Granucci II* Notice of Removal (Doc. 1).
17 Defendant filed motions to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil
18 Procedure in both actions on November 8 and November 17, 2022. *Granucci I* Mot. Dismiss
19 (Doc. 3); *Granucci II* Mot. Dismiss (Doc. 5).

20 **LEGAL STANDARD**

21 When multiple actions pending before a court involve common questions of law or fact,
22 the court may order a joint hearing or trial of any or all matters at issue in the actions; consolidate
23 the actions; and/or issue any other orders to avoid unnecessary cost or delay. Federal Rule Civil
24

25 *Granucci*, No. 1:22-cv-01483-CDB, and the case has been assigned to Magistrate Judge
26 Christopher D. Baker for all purposes. See *Granucci II* (Doc. 9).

27 ² Plaintiff’s failure to file oppositions to Defendants’ motions is construed as non-
28 oppositions to dismissal. See Local Rule 230(c) (“A failure to file a timely opposition may also
be construed by the Court as a non-opposition to the motion.”).

1 Procedure 42(a). The court has “broad discretion” to determine whether and to what extent
 2 consolidation is appropriate. *See Garity v. APWU Nat'l Labor Org.*, 828 F.3d 848, 855-56 (9th
 3 Cir. 2016) (*citing Inv'rs Research Co. v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 877 F.2d 777,
 4 777 (9th Cir. 1989)). “Typically, consolidation is a favored procedure.” *Blount v. Boston*
 5 *Scientific Corporation*, No. 1:19-cv-00578-AWI-SAB, 2019 WL 3943872, *2 (E.D. Cal. Aug. 21,
 6 2019) (*citing In re Oreck Corp. Halo Vacuum & Air Purifiers Mktg. & Sales Practices Litig.*, 282
 7 F.R.D. 486, 491 (C.D. Cal. 2012)). In deciding whether to consolidate actions, the court “weighs
 8 the saving of time and effort consolidation would produce against any inconvenience, delay, or
 9 expense that it would cause.” *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984); *Single*
 10 *Chip Sys. Corp. v. Intermec IP Corp.*, 495 F.Supp.2d 1052, 1057 (S.D. Cal. 2007).

11 A motion under Rule 12(b)(1) challenges a federal court’s subject matter jurisdiction. *See*
 12 Fed. R. Civ. P. 12(b)(1). Federal district courts are courts of limited jurisdiction that “may not
 13 grant relief absent a constitutional or valid statutory grant of jurisdiction”. *A-Z Int’l v. Phillips*,
 14 323 F.3d 1141, 1145 (9th Cir. 2003). “A federal court is presumed to lack jurisdiction in a
 15 particular case unless the contrary affirmatively appears.” *Id.*

16 In a Rule 12(b)(1) motion, the plaintiff is entitled to safeguards similar to those applicable
 17 to a Rule 12(b)(6). *Yerike v. Majano*, No. 2:20-cv-25555 KJM DB PS, 2021 WL1854191, at *1
 18 (E.D. Ca. May 10, 2021) (*citing Sea Vessel Inc. v. Reyes*, 23 F.3d 345, 347 (11th Cir. 1994)). The
 19 court takes the allegations in the complaint as true. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th
 20 Cir. 2004). However, the court is not restricted to the face of the pleadings and “may review any
 21 evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of
 22 jurisdiction.” *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). The burden to
 23 demonstrate subject matter jurisdiction is on the party asserting the claim. *See Harris v. KM*
 24 *Indus., Inc.*, 980 F.3d 696, 699 (9th Cir. 2020).

25 ANALYSIS

26 Defendant argues in both cases: (1) the Court lacks subject matter jurisdiction because the
 27 federal government has not waived sovereign immunity under the Federal Torts Claim Act
 28 (“FTCA”) to sue federal agencies such as USPS [*see Granucci I Mot. Dismiss* (Doc. 3-1 at 2-4);

1 *Granucci II* Mot. Dismiss (Doc. 5-1 at 2-4)], and (2) the cases must be dismissed under the
2 doctrine of derivative jurisdiction. *Granucci I* Mot. Dismiss (Doc. 3-1 at 4-5); *Granucci II* Mot.
3 Dismiss (Doc. 5-1 at 4-5).

4 A. Consolidation of these two actions is appropriate and desirable.

5 Both cases involve the same parties and identical questions of law and fact. Judicial
6 economy unquestionably is served by consolidation, where, as here, it will eliminate the need for
7 various judicial officers to address and rule on precisely the same issues in two “separate” cases.
8 The Court has weighed the saving of time and effort consolidation would produce against any
9 inconvenience, delay, or expense that it would cause, and concludes that the balance
10 overwhelmingly favors consolidation. *Huene*, 743 F.2d at 704. Therefore, the Court shall order
11 consolidation of these two cases to preserve the Court’s resources.³

12 B. Sovereign Immunity.

The United States and its federal agencies are immune from suit absent a waiver providing for their consent to be sued. *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). “The terms of consent to be sued may not be inferred, but must be unequivocally expressed.” *United States v. White Mt. Apache Tribe*, 537 U.S. 465, 472 (2003). A waiver of sovereign immunity is strictly construed in favor of the government, and a plaintiff bears the burden to show that the government has waived its immunity as to the specific claim asserted. *Cunningham v. United States*, 786 F.2d 1445, 1446 (9th Cir. 1986).

Generally, the United States has waived its sovereign immunity in civil actions under the FTCA “for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment...” 28 U.S.C.S. § 1333(b)(1). Under the FTCA, federal courts have exclusive jurisdiction over civil actions seeking monetary damages for torts committed by the

1 government and employees acting in the scope of their employment. *United States v. Park Place*
 2 *Assocs., Ltd.*, 563 F.3d 907, 924 (9th Cir. 2009).

3 The Postal Reorganization Act (“PRA”) provides that Defendant is an independent
 4 executive agency of the United States and enjoys sovereign immunity absent a waiver. *See* 39
 5 U.S.C.S. § 201; *MB Fin. Grp., Inc. v. U.S. Postal Serv.*, 545 F.3d 814, 816 (9th Cir. 2008). The
 6 PRA waives the Postal Service’s sovereign immunity to a limited extent by granting the Postal
 7 Service the power “to sue and be sued in its official name,” and it provides that the FTCA “shall
 8 apply to tort claims arising out of activities of the Postal Service.” *Dolan v. United States Postal*
 9 *Serv.*, 546 U.S. 481, 484 (2006); *see Kennedy v. U.S. Postal Serv.*, 145 F.3d 1077, 1078 (9th Cir.
 10 1998).

11 However, under the FTCA, Congress has explicitly provided an exception for its waiver
 12 of sovereign immunity against Defendant concerning “[a]ny claim arising out of the loss,
 13 miscarriage, or negligent transmission of letters or postal matter.” 28 U.S.C. § 2680(b). This
 14 includes “negligent[ly] causing mail to be lost or to arrive late, in damaged condition, or at the
 15 wrong address.” *Dolan*, 546 U.S. at 486 (finding that Section 2680(b) applies categorically to
 16 “injuries arising, directly or consequentially, because mail either fails to arrive at all or arrives
 17 late”).

18 Here, Plaintiff asserts Defendant’s employees lost or stole his package. *Granucci I*
 19 Compl. (Doc. 1 at 9); *Granucci II* Compl. (Doc. 1-1 at 2). Plaintiff’s claim against Defendant for
 20 lost or mishandled mail falls squarely within the FTCA’s postal matter exception. 28 U.S.C. §
 21 2680(b); *see Halousek v. United States Postal Serv.*, No. 2:19-cv-0588-MCE-KJN PS, 2020 WL
 22 2084818, at *3 (E.D. Cal. April 30, 2020) (Plaintiff’s claim her mail should have been secured by
 23 the post office, and as a result of some unknown and unspecific alleged wrongdoing her
 24 retirement checks were lost/missing fell, deemed within the postal matter exception to the FTCA),
 25 *F&R adopted*, 2020 WL 12949467 (E.D. Cal. June 10, 2020), *appeal dismissed*, 2022 WL
 26 1310817 (9th Cir. Feb. 23, 2022). Accordingly, because Defendant has not explicitly waived its
 27 sovereign immunity for this type of claim, this claim shall be dismissed for lack of subject matter
 28 jurisdiction. *Anderson v. United States Postal Serv.*, 761 F.2d 527, 528 (9th Cir. 1985).

1 C. Derivative Jurisdiction.

2 Defendant also argues this Court lacks jurisdiction under the doctrine of derivative
 3 jurisdiction. *Granucci I* Mot. Dismiss (Doc. 3-1 at 4-5; *Granucci II* Mot. Dismiss (Doc. 5-1 at 4-
 4 5). When a federal court concludes that it lacks jurisdiction over a removed case, the court
 5 generally must remand the case rather than dismiss it. *See* 28 U.S.C. § 1447(c); *Polo v.*
 6 *Innoventions Int'l, LLC*, 833 F.3d 1193, 1196 (9th Cir. 2016). However, the federal court may
 7 dismiss the case itself when there is “absolute certainty that remand would prove futile.” *Bell v.*
 8 *City of Kellogg*, 922 F.2d 1418, 1425 (9th Cir. 1991).

9 The derivative jurisdiction doctrine provides that, under certain circumstances, the federal
 10 court’s jurisdiction over a removed case is “derivative” of the original state court’s jurisdiction—
 11 that is, if the state court lacked jurisdiction over the case, the federal court does too, even if the
 12 case could have originally been brought in federal court. *Minnesota v. United States*, 305 U.S.
 13 382, 389 (1939) (“Where the state court lacks jurisdiction of the subject matter or of the parties,
 14 the federal court acquires none, although in a like suit originally brought in federal court it would
 15 have had jurisdiction.”); *see also Cox v. USDA.*, 800 F.3d 1031, 1032 (9th Cir. 2015) (because
 16 USDA did not waive sovereign immunity, the state court lacked jurisdiction, and “under the
 17 derivative jurisdiction doctrine, the district court also lacks jurisdiction over the petition on
 18 removal”) (*per curiam*). The Ninth Circuit and district courts within the Circuit have consistently
 19 applied this doctrine to cases removed under § 1442. *See. E.g., Cox*, 800 F.3d at 1032; *Sadozai v.*
 20 *Def. Lang. Inst.*, 2021 WL 4710564, at *1 (N.D. Cal. Oct. 7, 2021); *Munshower v. City of Lodi*,
 21 No. 16-1163, 2016 WL 6875905, at *1–2 (E.D. Cal. Nov. 22, 2016).

22 Plaintiff filed two suits against Defendant in Small Claims Court of California, Kern
 23 County. *Granucci I* Compl. (Doc. 1); *Granucci II* Compl. (Doc. 1-1). Defendant and the United
 24 States had not waived the sovereign immunity of its agencies for such lawsuits in state court.
 25 Under the FTCA, federal courts possessed exclusive jurisdiction over civil actions against the
 26 federal government. *Park Place Assocs., Ltd.*, 563 F.3d at 924. Because the Small Claims Court
 27 of California Kern County lacked jurisdiction over Plaintiff’s lawsuits, this Court likewise never
 28 acquired jurisdiction, and Plaintiff’s claims must be dismissed.

Finally, a district court may dismiss a complaint with prejudice “only when it is clear that no amendment could cure a defect in the complaint.” *City of Oakland v. Hotels.com LP*, 572 F.3d 958, 962 (9th Cir. 2009). This Court lacks jurisdiction over both of Plaintiff’s lawsuits. Therefore, no amendment can cure Plaintiff’s complaints and, thus, dismissal with prejudice is warranted.

CONCLUSION AND ORDER

Accordingly, for the reasons set forth above, it is HEREBY ORDERED:

IT IS SO ORDERED.

Dated: **January 26, 2023**



UNITED STATES MAGISTRATE JUDGE